

## Wage and Hour Division, Labor

## § 579.5

a specific exemption or exception provided in the Act makes such conduct permissible. Thus, the Act provides:

(1) That none of the child labor provisions of section 12 shall apply to: (i) Any child employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions; (ii) any employee engaged in the delivery of newspapers to the consumer; (iii) any homemaker engaged in the making of wreaths composed principally of natural holly, pine, cedar, or other evergreens (including the harvesting of the evergreens or other forest products used in making such wreaths); or (iv) any employee whose services during the workweek are performed in a workplace within a foreign country or within territory under the jurisdiction of the United States other than the States, territories, and possessions listed in section 13(f) of the Act (see Act, sections 13(c)(3), 13(d), 13(f));

(2) That, with respect to the violations described in paragraph (a)(1) of this section, any such shipment or delivery for shipment of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer, manufacturer, or dealer that the goods were produced in compliance with the requirements of section 12 of the Act, and who acquired such goods for value without notice of any such violation, shall not be deemed prohibited (see Act, section 12(a) and 29 CFR part 789);

(3) That, with respect to violations described in paragraph (a)(2) of this section resulting from employment of minors as described in paragraph (b)(2)(iv), a parent or person standing in place of a parent may lawfully employ his or her own child or a child in his or her custody under the age of 16 years in an occupation *other than*: (i) Manufacturing or (ii) mining or (iii) an occupation found and declared by the Secretary of Labor to be particularly hazardous for the employment of children between the ages of 16 and 18 years or detrimental to their health or well-being, and an employer may lawfully employ a young worker between 14 and 16 years of age in an occupation permitted and under conditions prescribed by 29 CFR part 570, subpart C;

(4) That, with respect to violations described in paragraph (a)(2) of this section resulting from employment of minors in agriculture as described in paragraph (b)(2)(iii), a parent or person standing in place of a parent may lawfully employ on a farm owned or operated by such parent or person, his or her own child or a child in his or her custody under the age of 16 years in an occupation in agriculture found and declared by the Secretary of Labor to be particularly hazardous for the employment of children below such age;

(5) That, with respect to violations described in paragraph (a)(2) of this section resulting from employment of minors in agriculture as described in paragraph (b)(3)(ii), employment of minors 12 or 13 years of age is lawful under the conditions prescribed in paragraph (b)(3)(ii)(A) of this section and employment of minors under 12 years of age is lawful under the conditions prescribed in paragraph (b)(3)(ii)(B) of this section; and

(6) That, with respect to violations described in paragraph (a)(2) of this section resulting from employment of minors in agriculture as described in paragraph (b)(4), employment of minors under 12 years of age is lawful under the conditions prescribed in paragraph (b)(4)(i) or (ii) of this section.

[40 FR 25792, June 18, 1975, as amended at 41 FR 26836, June 29, 1976; 69 FR 75405, Dec. 16, 2004]

### § 579.4 [Reserved]

### § 579.5 Determining the amount of the penalty and assessing the penalty.

(a) The administrative determination of the amount of the civil penalty, of not to exceed \$10,000 for each employee who was the subject of a violation of section 12 or section 13(c)(5) of the Act relating to child labor or of any regulation issued under that section, will be based on the available evidence of the violation or violations and will take into consideration the size of the business of the person charged and the gravity of the violation as provided in paragraphs (b) through (d) of this section; Provided, however, that for any violation occurring on or after January 7, 2002 the civil money penalty amount

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will increase to not to exceed \$11,000 for each employee who was the subject of a violation.

(b) In determining the amount of such penalty there shall be considered the appropriateness of such penalty to the size of the business of the person charged with the violation or violations, taking into account the number of employees employed by that person (and if the employment is in agriculture, the man-days of hired farm labor used in pertinent calendar quarters), dollar volume of sales or business done, amount of capital investment and financial resources, and such other information as may be available relative to the size of the business of such person.

(c) In determining the amount of such penalty there shall be considered the appropriateness of such penalty to the gravity of the violation or violations, taking into account, among other things, any history of prior violations; any evidence of willfulness or failure to take reasonable precautions to avoid violations; the number of minors illegally employed; the age of the minors so employed and records of the required proof of age; the occupations in which the minors were so employed; exposure of such minors to hazards and any resultant injury to such minors; the duration of such illegal employment; and, as appropriate, the hours of the day in which it occurred and whether such employment was during or outside school hours.

(d) Based on all the evidence available, including the investigation history of the person so charged and the degree of willfulness involved in the violation, it shall further be determined, where appropriate,

(1) Whether the evidence shows that the violation is “de minimis” and that the person so charged has given credible assurance of future compliance, and whether a civil penalty in the circumstances is necessary to achieve the objectives of the Act; or

(2) Whether the evidence shows that the person so charged had no previous history of child labor violations, that the violations themselves involved no intentional or heedless exposure of any minor to any obvious hazard or detriment to health or well-being and

were inadvertent, and that the person so charged has given credible assurance of future compliance, and whether a civil penalty in the circumstances is necessary to achieve the objectives of the Act.

(e) An administrative determination of the amount of the civil money penalty for a particular violation or particular violations of section 12 relating to child labor or any regulation issued under that section shall become final 15 days after receipt of the notice of penalty by certified mail by the person so charged unless such person has, pursuant to § 580.6 filed with the Secretary an exception to the determination that the violation or violations for which the penalty is imposed occurred.

(f) A determination of the penalty made in an administrative proceeding after opportunity for hearing as provided in section 16(e) of the Act and pursuant to Part 580 of this chapter shall be final.

[40 FR 25792, June 18, 1975, as amended at 56 FR 8679, Feb. 28, 1991; 66 FR 63503, Dec. 7, 2001]

EFFECTIVE DATE NOTE: At 75 FR 28461, May 20, 2010, § 579.5 was amended by revising paragraphs (a) and (e), effective July 19, 2010. For the convenience of the user, the revised text is set forth as follows:

### § 579.5 Determining the amount of the penalty and assessing the penalty.

(a) The administrative determination of the amount of the civil penalty for each employee who was the subject of a violation of section 12 or section 13(c) of the Act relating to child labor or of any regulation under those sections will be based on the available evidence of the violation or violations and will take into consideration the size of the business of the person charged and the gravity of the violations as provided in paragraphs (b) through (d) of this section. The provisions of section 16(e)(1)(A)(ii) of the Fair Labor Standards Act, regarding the assessment of civil penalties not to exceed \$50,000 with regard to each violation that causes the death or serious injury of any employee under the age of 18 years, apply only to those violations that occur on or after May 21, 2008.

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(e) An administrative determination of the amount of the civil money penalty for a particular violation or particular violations of section 12 or section 13(c) relating to child labor or any regulation issued under those

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sections shall become final 15 days after receipt of the notice of penalty by certified mail by the person so charged unless such person has, pursuant to §580.6 filed with the Secretary an exception to the determination that the violation or violations for which the penalty is imposed occurred.

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### PART 580—CIVIL MONEY PENALTIES—PROCEDURES FOR ASSESSING AND CONTESTING PENALTIES

#### Sec.

- 580.1 Definitions.
- 580.2 Applicability of procedures and rules.
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#### RULES OF PRACTICE

- 580.7 General.
- 580.8 Service and computation of time.
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#### REFERRAL FOR HEARING

- 580.10 Referral to Administrative Law Judge.
- 580.11 Appointment of Administrative Law Judge and notification of prehearing conference and hearing date.
- 580.12 Decision and Order of Administrative Law Judge.
- 580.13 Procedures for appeals to the Administrative Review Board.
- 580.14 [Reserved]
- 580.15 Responsibility of the Office of Administrative Law Judges for the administrative record.
- 580.16 Final decision of the Administrative Review Board.
- 580.17 Retention of official record.
- 580.18 Collection and recovery of penalty.

AUTHORITY: 29 U.S.C. 9a, 203, 209, 211, 212, 213(c), 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App; secs. 25, 29, 88 Stat. 72, 76; Secretary of Labor's Order No. 4-2001, 66 FR 29656; 5 U.S.C. 500, 503, 551, 559; 103 Stat. 938.

SOURCE: 56 FR 24991, May 31, 1991, unless otherwise noted.

#### § 580.1 Definitions.

As used in this part:

*Act* means the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060 as amended; 29 U.S.C. 201 *et seq.*).

*Administrative law judge* means a person appointed as provided in 5 U.S.C. 3105 and subpart B of part 930 of title 5 of the CFR, and qualified to preside at hearings under 5 U.S.C. 554-557.

*Administrator* means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, and includes any official of the Wage and Hour Division authorized by the Administrator to perform any of the functions of the Administrator under this part and parts 578 and 579 of this chapter.

*Chief Administrative Law Judge* means the Chief Administrative Law Judge, Office of the Administrative Law Judges, U.S. Department of Labor, Washington, DC 20210.

*Department* means the U.S. Department of Labor.

*Person* includes any individual, partnership, corporation, association, business trust, legal representative, or organized group of persons.

*Secretary* means the Secretary of Labor, U.S. Department of Labor, or a designated representative of the Secretary.

*Solicitor of Labor* means the Solicitor, U.S. Department of Labor, and includes attorneys of the Office of the Solicitor authorized by the Solicitor to perform functions of the Solicitor under this part.

#### § 580.2 Applicability of procedures and rules.

The procedures and rules contained in this part prescribe the administrative process for assessment of civil money penalties for any violation of the child labor provisions at section 12 of the Act and any regulation thereunder as set forth in part 579, and for assessment of civil money penalties for any repeated or willful violation of the minimum wage provisions of section 6 or the overtime provisions of section 7 of the Act or the regulations thereunder set forth in 29 CFR subtitle B, chapter V. The substantive requirements for assessment of civil money penalties are set forth at 29 CFR part 579 (child labor) and part 578 (minimum wage and overtime).